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SOME TENDENCIES IN COMBINATIONS WHICH MAY BECOME DANGEROUS

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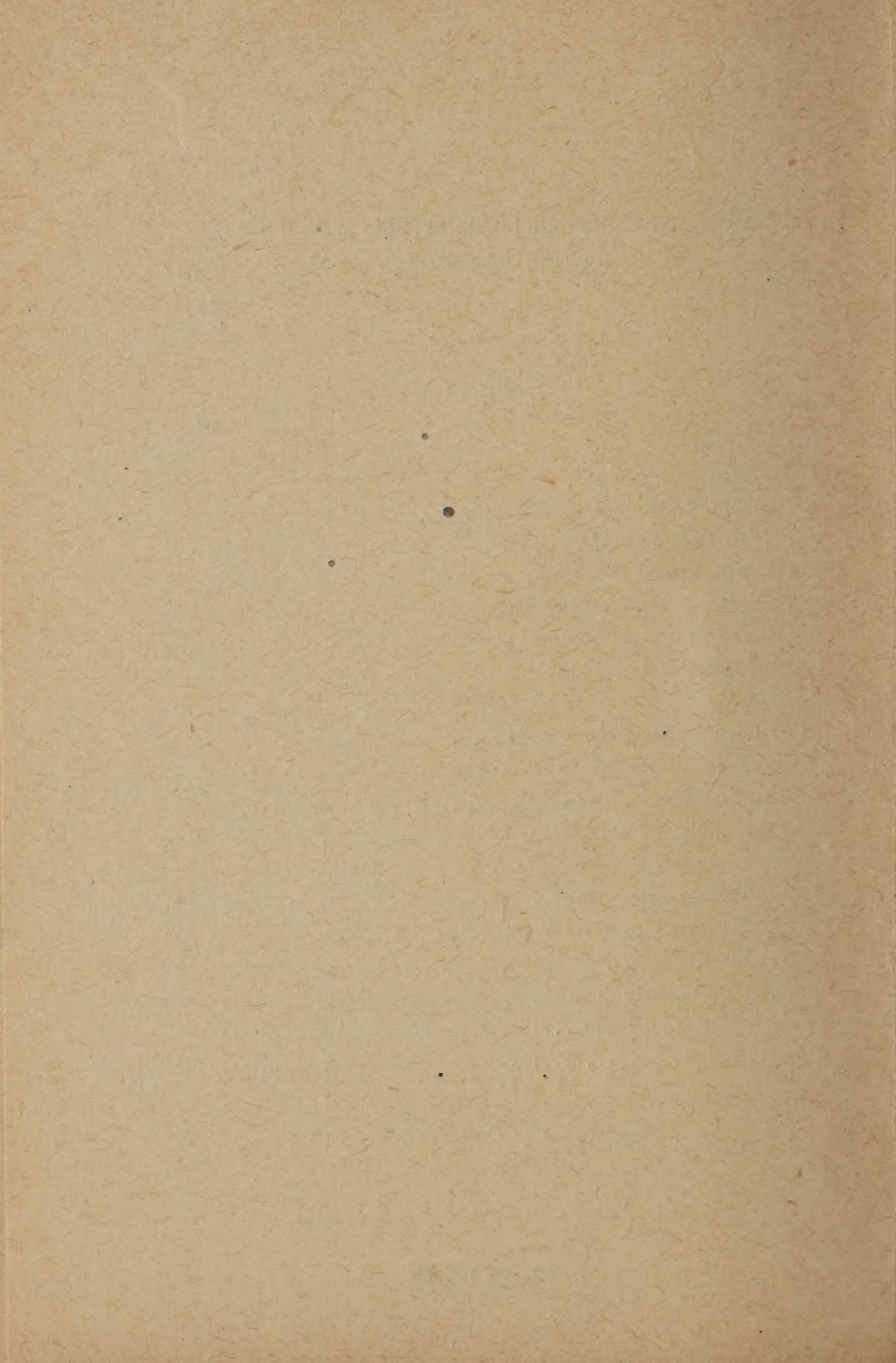
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SOME TENDENCIES IN COMBINATIONS WHICH MAY BECOME DANGEROUS.¹

BY JAMES B. DILL, ESQ.

1. There is quite as much danger to-day to the public from the tendency on the part of some to indulge in unreasonable denunciations and to attempt hysterical and unwise legislation against corporate capital as there is of real peril from the corporations themselves.

2. Against whatever evil is threatening or existing from the corporate evolution of to-day, there is but one infallible safeguard, and that is an enlightened public opinion, framed upon a clear understanding of the whole situation and based upon an honest desire to do what is right.

Definition of Topics.—We are, in the first place, dealing with tendencies only, discussing the probable drift of affairs, dealing with dangers perhaps to be apprehended, although to-day not in existence. These so-called tendencies are to be found only in some of the recent combinations, most emphatically not in all, and by no means in the majority of the aggregations of capital in corporate form. We are dealing largely with isolated symptoms in the case of the few, and not in the makeup of the average or the many. In the next place, one must bear in mind that the danger is not to

1. A paper read before the twelfth annual meeting of the American Economic Association, Ithaca, N. Y., December, 27-29 1899.

the public alone. Any dangerous tendency imperils not only the public at large, but threatens as well all corporations of integrity. The question before us can, therefore, be discussed with the same degree of earnest inquiry and quite as fully from the corporate standpoint as from the point of public inquiry.

One may go a step farther and add that corporate capital of integrity to-day is as desirous of having a proper line of demarkation drawn between the corporation of integrity and those companies otherwise situated as is the public at large. This largely as a means of self-preservation. To-day, corporations strong in the integrity of their finances, their management and the personnel of their officers demand some line of demarkation between themselves and other corporations "differently situated," in order that the public may recognize the corporate proposition that "there are corporations and corporations."

It is in view of this fact that the corporation man of to-day, whose sympathies and interests are with, whose holdings are in corporations of integrity, unites with the economist in demanding that the corporation problem shall be worked upon the public blackboard and in plain sight, and insisting that the corporation problem shall be in no part represented by the unknown quantity "x."

Heretofore the attitude of some of the corporation mathematicians has been to write the denominator in large and expansive numbers until the difference between \$5,000,000 and \$20,000,000 has become a difference without a distinction, until the average mind of

the average man has failed to grasp the importance of numerical addition and subtraction. Assuming that the denominator of the fraction means the capital stock, so long as the corporate mathematician failed to put upon the public blackboard the numerator indicating the assets of the company, there was no proposition from which the public could deduce any known and certain results. Corporations strong in the integrity of their organization, their management and their financiers are to-day forced by their surroundings, compelled by pressure of business competition and obliged by the force of a growing and enlightened public opinion to draw a line of clear demarkation between themselves and other corporations differently situated—those who cannot stand the test.

The time was when the legal existence of a corporation with a capital of \$50,000,000 carried with it distinction, weight and a degree of public confidence. But, to-day a corporation of millions of capital (the difference between \$50,000,000 and \$100,000,000 being scarcely a factor) can be organized for a small sum, its stock issued behind closed doors for services, or other unknown quantities, not issuing "two for one," but literally "millions for nothing." Formerly the great industrial corporations said, "Our capital is millions, we are strong;" but of late these great and sound corporations do not stand alone in the expanse of capitalization; others saw that the million denominator was easy to write on the public blackboard, and so long as the sound corporations were unwilling to complete the corporate fraction, so long the imitators could

make equal claims for the confidence of the investing public. The market became, therefore, crowded, even glutted, with securities of corporation propositions whose denominators were alike magnificent in their expansion, but whose numerators were the unknown quantities. The good were in danger of being injured by the failure of those otherwise situated. Hence, necessity to-day compels corporations strong in their integrity to write the corporation fraction in full view of the public, in order to draw the line of demarkation, in the plain sight of the public, between themselves and others, and thus protect themselves against other corporate propositions with expansive denominators, but without numerators that enumerate. Hence, it is that we find the proposition to-day true, that integrity of corporate capital and corporate management, and as well on the part of the public at large, demands, and each for its own proper protection, a reasonable degree of publicity in, and as well about, corporate affairs, accounts and finances.

I repeat, therefore, that we are free to examine the question presented and to discuss it in detail and with frankness, as an earnest inquiry not only on the part of the inquiring public seeking light, but also on the part of corporations based on integrity, desiring the public to know where the distinguishing line is between the good and the bad, between the false and the genuine.

A GENERAL LINE OF DEMARKATION.

Corporate Integrity.—In discussing what tendencies, if any, are likely to become dangerous, we seek a com-

mon line of demarkation upon which all thinking men can agree. This general line of demarkation between the good and the possibly bad, or resulting evil, is not difficult to find. It lies in the single proposition of corporate integrity from inception to finish.

Wherever on the one side we find a corporation honest in its promotion, careful and trustworthy in the financiering of the proposition, upright in its management, faithful in the discharge of its duties toward its stockholders, and single in its purpose to produce the best business results, in such a corporation as this we look for no tendencies which may become dangerous, nor will we find them.

But, on the other hand, among those corporations which depart from the line of integrity, whose promotion is improper or fraudulent; whose financiering is unwise or vicious; whose capitalization is, therefore, excessive; whose corporate position has no numerator, only an expansive denominator, thus avoiding a proper degree of publicity; whose management seeks through a minority to control the majority, and whose officers are more interested in the success of their private ventures in speculating in the stock of the company than the success of the business enterprise as an entirety; among such corporations we look for those tendencies which may become dangerous, not only to the public at large, but to incorporated capital generally.

FIRST DANGEROUS TENDENCY.

Excessive Capitalization.—The first tendency which may be regarded as dangerous is excessive capitaliza-

tion. Excessive capitalization is the offspring of two parents, the promoter and the financier. The marketing of any undertaking, whether good, bad or indifferent, is always dependent upon the existence of the financier—the hand, influence and reputation of the financier is essential to its complete existence.

Improper Promotion.—The question may be asked, “What is improper promotion?” From a theoretical standpoint, it is clear that promotion for promotion’s sake merely is apt to be improper promotion. As a practical illustration, the promoter who takes \$500,000 worth of assets and issues to the vendors of the property mortgage bonds practically to the amount of their purchase price, \$500,000, and then, as against the supposed equity in this property issues \$6,000,000 of stock, part so-called “preferred” and part common, improperly promotes.

The promoter gives \$500,000 of this stock as a bonus to the vendors, retaining in the neighborhood of \$3,000,000 of this stock for himself and endeavors to go to the public with the balance, is certainly properly chargeable with improper promotion.

Another degree of impropriety in promotion is attained when this promoter, in order to give the corporation a standing to which it is not otherwise entitled, seeks to “people” his board of directors with men of reputation, many innocently and unwittingly lending their names to an improper organization, but for a consideration. When, to accomplish this result, he gives large bonuses of stock to these gentlemen to induce them to become directors, he and they as well

are chargeable with improper promotion. The gentlemen who go to make up this board and who lend their credit to the enterprise without fully understanding the situation may be charged with carelessness in assisting in such promotion.

Improper Financiering.—Take, if you please, the history of this organization still farther. The promoter who finds himself with a corporation owning property and having more stock issued than assets, possessing a reputable board of directors, and knowing full well that he lacks financial backing, goes to the financier and says, "Assist me in putting this stock on the market." If the first question of the financier, whether he be an individual or an officer of a financial institution is "What is there in it for me?" then the promoter has an opening for improper financiering. If, when the question of the division of bonuses is satisfactorily arranged, that financier, or that company, allows the stock to be put before the public through the agency of the individual or the corporation, then we have a case of unwise financiering, if nothing more. The principle is somewhat analogous to that of the man who issues certificates of character to another who is either undeserving or concerning whom he knows nothing, and issues these certificates of character for private undisclosed consideration. The individual who, for a private consideration to himself, undisclosed to the public, gives the use of his name to that organization, has certainly committed an indiscretion. That officer of a moneyed corporation who, for a private consideration to himself, undisclosed, it may be, to his board of

directors, recommends, urges or assists in the flotation of an undertaking through his institution, has assisted a financing which it would not be wholly inappropriate to characterize as unwise, or otherwise, as you see fit. The trust company which receives a large compensation, and does not examine the undertaking carefully, and yet puts the proposition upon the market, may make a mistake. Certainly it is unwise.

And so when you ask me as to the general proposition as to what is characteristic improper or fraudulent promotion, and as to what is an element of unwise or vicious financing I answer you, secret and undisclosed private consideration for public commendation. Where you find secret and undisclosed considerations proceeding from the promotion either to the directors of the corporation itself or to the moneyed corporation, or its officers, in such cases you may look for cases of promotion which are perhaps improper, and of financing which is possibly unwise.

At this point I desire to be emphatic and to be understood in saying that I am speaking of "tendencies." I am not speaking of facts existing or of which we see clear indications. Most emphatically do I disclaim any intention of even suggesting that this course has been followed by any existing corporation or any institution of standing. I may be permitted to observe, in passing, that that moneyed institution or that financier who observes the greatest degree of caution for and in behalf of the public must ultimately meet with the greatest financial success. When an undertaking is presented to a financier or to a moneyed institution, that

financier or moneyed institution must at once consider himself or itself to be retained either in the interest of the promoter, or else to be retained in behalf of the public. Financial institutions and financiers know well that their assistance is sought to facilitate the issue of securities because the public recognizes the fact that the security partakes to a greater or less degree of the character of the institution from which, or through which, it emanates. No man has stood by combinations, good, bad or indifferent, from their conception in the brain of the promoter, at their birth in the hands of the financier, through their organization and through the management of their corporate affairs by the board of directors, until they have been launched either to a public success or laid away in the grave under the receiver's kindly care—no such man with such practical experience will deny that much of the root of evil and the beginning of dangerous tendency may be found with the promoter and with the financier.

The results of excessive capitalization are three-fold:

- I. The Impairment of Public Confidence.—I am not prepared at this time to argue against the expressed opinion of some who say that the flooding of the country with stock and corporate securities, which on their face state in plain language that their par is \$100, while the public knows that the value is but a small fraction of that amount, has in the long run somewhat of the effect of a depreciated currency. Neither will I take the time to violently differ with those who say that excessive capitalization which is productive of depre-

ciated corporate securities will eventually have much the same effect as depreciated currency. In support of this view it is urged that lack of accuracy in statements relating to financiering, whether in corporate securities or in public moneys, can only lead to evil, and that \$100 should approximately amount to \$100, whether written upon the bank bill issued directly by the moneyed corporation or upon the certificate, or stock, or the bond, or other corporate security emanating from the moneyed corporation and countersigned or registered by the bank or trust company. We all agree that in order to protect the financial reputation and standing of the country, everything relating to finances and financial institutions should be above suspicion either of mistake in judgment or conscious error.

The country with securities that widely fluctuate, and that are affected by every breath of suspicion or suggestion, is somewhat in the same shape as a ship at sea with a loose and rolling cargo throwing itself from side to side in the hold of the vessel. To the man who thinks, from a financial standpoint, the situation presents a grave question. The root of the trouble is the alarm, panic and fear which is produced from a lack of knowledge and from want of positive information as to how high or how low these securities ought to go, based upon a public demonstration of the corporate fraction. It is the want of publicity, the resulting inability to form an opinion, and want of judgment as to sound values, that cause the panic and create the ruin.

II. Improper Dividend Payments.—A corporation that is excessively capitalized, in order to keep in the

race, must provide for the payment of at least minimum dividends, and that too upon a stock which by no means represents the actual value of the property, and often the estimated earning power of the company is based upon the earning power in prosperous times and with no allowance for times of lesser prosperity. In such a situation, therefore, a board of honest and well meaning directors are faced with a difficulty; they must either pay their dividends to approximately the same amount as their neighbors more fortunately situated, or they must permit their stock to become depreciated in the market as a result of failure to pay dividends. The tendency of an attempt to pay dividends upon this excessive capitalization is to pay dividends in excess of the actual earning power, and out of capital account.

One way in which this is said to have been done is by the conversion of the capital into dividends, a process which in the end is sure to wreck the company, decreasing as it does its earning power each year in proportion to the amount thus withdrawn. The tendency is to supply the gap thus made in the capital of the company by forcing on the books the capital account with property taken from elsewhere. In such a case the tendency again is to conceal from the stockholders the real state of affairs.

III. Effect on Prices and Wages.—The third effect of excessive capitalization and the attempt to pay dividends upon such capitalization is a tendency to create artificial earnings upon an artificial capital, both by artificially raising the price of the article produced, and by the depreciation of the wages paid. The result to

the public, from an economic standpoint, is objectionable.

SECOND DANGEROUS TENDENCY.

Avoidance of Publicity.—Another characteristic of those corporations amongst whom we search for tendencies that may become dangerous is the avoidance of a reasonable degree of publicity in and about their corporate affairs. The question of publicity is one concerning which there are wide differences of opinion. It is a question concerning which men may honestly differ according to the view point from which it is discussed, but even in the discussion of this question there is a common ground of approach. All must concede that publicity must be reasonable, and that it must be restricted to those matters concerning which the public has a right to know.

The corporations insist that the publicity must apply as well to one as to another corporation similarly situated; that it is not just to ask a disclosure of one corporation which is not required of another similarly situated.

The proposition has been made that publicity as to any matter in or about the corporation, which is accessible to every stockholder, is sufficient publicity to answer the requirements of a proper demand. There is strength in this assertion because it is based upon the principle that what is known to many is accessible to all interested. This proposition, if accepted, would determine the extent to which the publicity should go. If a corporation had but three stockholders, the details would be of interest only to the few, and not to the

many. The lack of publicity would not be important in such a case. The corporation, however, having a thousand stockholders or more, if it should make proper information accessible to each of the thousand stockholders, would thus practically make the information public, because whatever a thousand stockholders knew, the public could easily ascertain and verify. It is along this line that the proper solution of the whole question may be obtained. We are safe in saying that we may look among those corporations who seek to avoid any degree of publicity, even among their stockholders, for those tendencies which may become dangerous, not only to the public, but to incorporated capital. Publicity to all of the stockholders is practically publicity to the world, and the public need not be alarmed about a lack of publicity in any corporation where every essential fact concerning its inception, organization, management and affairs is known to every stockholder.

If financial institutions always felt that they had a public responsibility in refusing to financier organizations whose charter and by-laws gave clear indications of an attempt to avoid proper publicity, of an attempt to keep from the stockholders pertinent information, of an attempt by the minority to wrongly control the majority, such tendencies would often die in their inception. Every trust company knows that a bond must depend, as to the rights of the holders, upon the mortgage, and a corporate bond is not a corporate bond simply because it is a bond, but that it is regulated, controlled, limited or expanded according to the cor-

porate mortgage. If every trust company should insist upon plainly printing upon the face of the bond every limitation upon the bondholder's rights contained in the mortgage, the investing public would less often come to grief. So, if the financial institution demanded that there should be placed upon the certificate of stock every restriction upon the power of the stockholders contained in the charter or by-laws, then the public would less often make a mistake in its investments. The public are not wholly free from blame, because, if the public would refuse to buy stock in any corporation unless they received with the stock a copy of the certificate of incorporation and by-laws, they would then know what they were buying, so far as the terms of the securities were concerned, although they might be ignorant of the solution of the corporate fraction.

THIRD DANGEROUS TENDENCY.

Evasive Legislation.—We see another marked tendency to avoid proper publicity in the attempt to pass, and sometimes in the enactment, of what is evasive legislation. By this is meant legislation which seeks to excuse corporations from carrying on what are understood to be statutory duties as to publicity.

Legislation in New York.—The history of the statutes of New York from 1895 down to 1899 shows that by enactment the Legislature has from year to year required less publicity, until, to-day, practically all publicity may be avoided. It is impracticable within the scope of this paper to discuss the law in all aspects,

but take it in respect to a single matter—that of annual reports.

The courts of the state have emphatically said that the failure of the directors to make the annual reports required by the statutes was not a simple contract failure, but was the commission of a moral wrong, and directors failing to file the annual report were liable *ex delicto* and not *ex contractu*. From 1848 to 1890 practical publicity was required of corporations as to their capital, debts, liability and stockholders, and a statement containing these details was required to be made and verified by the directors, filed in the office of the county clerk and of the secretary of state, and published in the newspapers where the corporation did business.

In 1890 the "Stock Corporation Law" of the state (Chapter 564, Laws of 1890, Sec. 20) provided that every stock corporation, except railroad corporations, shall annually make a report as of the first day of January, which shall state:

The amount of capital stock and the proportion actually paid in;

The amount and, in general terms, the nature of its existing assets and debts, and all its receipts and expenditures during the year;

The names of its then stockholders; the dividends, if any, declared since its last report.

For failure to make such report, all the directors were made personally liable for the debts of the corporation.¹

1. Laws of 1890, p. 1082.

This was in substance a re-enactment of the Act of 1875, but with this omission, that the Law of 1875 required such a report to be published in the newspapers. The Act of 1890 required no publication, but necessitated only a filing of the report. In 1892 the law was again amended, requiring less publicity, and all matters required in the Act of 1890 were eliminated, except the following three:¹

1. The amount of capital stock and the proportion actually issued.
2. The amount of its debts, or the amount which they do not then exceed.
3. The amount of its assets, or the amount which its assets, at least, equal.

Under this provision of the statute as thus amended publicity was practically done away with, except as to the amount of capital and the proportion actually issued. There was no requirement of any information as to how this capital had been issued, whether for property or for cash. The second and third provisions amount to nothing. The amount which the debts of the corporation do not exceed is sufficed by saying "that the debts do not exceed one million dollars." The third provision—an amount which its assets, at least, equal, would be answered by prescribing "that its assets equal one dollar;" and from neither is any real information deducible. The result of this amendment of 1892 was practically to remove all actual publicity, except as to the amount of capital stock and the proportion paid in.

1. Laws of 1892, Vol. 2, p. 1832, Sec. 30,

In 1899, however, a new section was added to the act, providing that "No director or officer of any stock corporation shall be liable to any creditor of the corporation because of the creation of any excessive indebtedness, or because of any failure to make or to file an annual report, whether heretofore or hereafter occurring, in case of any debt, as to which personal liability of directors or officers may be or shall have been waived by such creditor, or by any one under whom he claims; or by any provision of any instrument creating or securing the debt."¹ This statute, therefore, practically did away with the duty of publicity by providing that it might be a matter of private barter made between the creditor and the corporation.

This Chapter 354 of the Laws of 1899 made it practicable for every corporation to avoid publicity by adding to every contract of liability specific words of waiver of the individual statutory responsibility of the stockholder and director. If the courts of highest resort of the state of New York were right in declaring this was a moral duty, what can be said of the legislative act which permitted this moral duty to be avoided by directors of a corporation for the consideration, if you please, of a dollar?

This same statute of 1899, which does away with the moral duty of a director to make public reports, removed another ancient landmark of publicity which had for years existed in the state of New York, namely, the prohibition against the creation of indebtedness in excess of the amount of the capital stock. This

1. Laws of New York, 1899, Chap. 354.

statute against excessive indebtedness proceeded upon the presumption that the paid-up capital stock of a corporation was a fair statement of the value of its assets, and that so long as the indebtedness of the corporation did not exceed its capital stock, there was property sufficient to pay the creditor. The creditor might rest content, assuming that the publication of the capital stock and the amount paid in was in fact the publication of the maximum amount of indebtedness of the corporation, because the one was required to be contained within the other and not to exceed the other under penalty of the liability of the directors to pay the debt thus in excess. But the passage of the Act of 1899 was a letting down of the bars in this respect, and to-day no such assurance is held out to creditors of a corporation, because it has already become general for corporations to avoid publicity by insisting on inserting in their contracts a waiver of liability of directors and stockholders.

Legislation in New Jersey.—When we turn to the state of New Jersey, we are told that required publicity has been on the increase as represented in the legislation of the last ten years. It is true that there has been marked improvement in the statutes of that state in the last five years, in the direction of publicity. It is true that in 1898 (Laws of 1898, p. 410) an act was passed requiring every corporation, in its certificate of incorporation and in every report thereafter filed or published, to state the location, by street and number, of its principal office in the state, and the name of the agent designated to be in charge thereof, and upon

whom process against the company was required to be served. This was an act, it is true, somewhat in advance of modern legislation, in requiring a corporation from its cradle to its grave to have a known and published place of business and requiring that corporation to insert upon every document which it filed or published the address of the corporation and the name of the person in charge.

It is likewise urged, and in accordance with the facts, that since 1849 the provisions of Section 44 of the General Corporation Act had been in force providing that every corporation must have and maintain a principal office in the state of New Jersey, with an agent in charge thereof, and in that office must be kept a transfer book in which transfers of stock could be made, and the stockbook containing the names of all of the stockholders and their addresses, together with the amount of stock held by each, all of which should be open to the inspection of any stockholder and any other person entitled to see the same at all times during business hours.

It is also true, as stated, that in 1898, Section 33 of the General Act was amended, and more publicity was required in so far that, while previously it had been sufficient to have a list of the stockholders open to the inspection of the stockholders themselves always ready twenty days before any election, the law as then amended required the book containing the names of the stockholders with their respective holdings and their addresses to be always open to the stockholders and to be presented at any election, and added, what is an

effective penalty, that the failure to do this disqualified any member of the then board from re-election.

We concur in the statement made respecting the law of New Jersey, that this presents stringent enactments for publicity among the stockholders as to their co-stockholders and their holdings.

As to the payment of the capital stock, the law of the state of New Jersey, it is conceded, is even more stringent than that of New York as to publicity, in that, with the payment of each installment of capital stock, a certificate is required to be filed stating the amount of the installment, the total amount of capital then paid in up to that date, and the manner in which the payment was made, whether in cash or in property.

Annually, too, each corporation was required to make and file in the office of the secretary of state a statement giving the names and addresses of all the directors, their terms of office, the date of their election or appointment, the character of the business, the street and number of the principal office, the name of the agent in charge, and providing a penalty for failure to file such report in the shape of a liability of \$200, in suit to be brought by the attorney-general of the state of New Jersey.

The law also makes the books of account and vouchers open to the inspection of the stockholders, and gives the chancellor of that state power at any time, with or without notice, to issue an order requiring the corporation to produce its books in court for examination by a stockholder or a creditor.

These, then, are the facts upon which the argument

is based that New Jersey has improved in the matter of enforced publicity.

We notice, however, that there is no statute, either of the state of New York or of New Jersey, which is similar to the provisions of the English law to the effect that all stock issued shall be held subject to payment in full in cash in the hands of whomsoever it may be, unless, before the issue and allotment thereof, a contract shall be filed in the registered office of the company, which contract shall disclose in detail the consideration in the way of services or property for which the stock shall be issued in lieu of cash, and that, in the event of such filing of such contract, that stock can be issued for property or services rendered to the amount of the par value of this stock.

FOURTH DANGEROUS TENDENCY.

Stock Speculations.—Of necessity, briefly, we take up the last, but by no means least important point of this discussion. We touch upon a tendency which is not found in the corporation, but which is said to exist in certain corporate officers. I differ with anyone who asserts that this tendency to speculate in stocks of the company is often found, or that it is frequently seen in officers or corporations of standing and importance. It, however, seems true that any tendency in any corporation to have two interests in the business equally important and equally engrossing the attention of the officers, the one the business end of the corporation, and the other the speculative or Wall street end, is a tendency which may be, with emphasis, pronounced as dan-

gerous ; dangerous to the corporation itself, as exposing it to attacks from sources other than those of the business itself ; dangerous to the officers of the corporation, as tending to take their attention from the one and only end and purpose of the corporation, viz., the betterment of the industry in hand ; dangerous to the stockholders, as furnishing to them a false and unwarranted indication of the progress, or, as the case may be, the failure of the business itself.

We cannot assume that any of the present great combinations were put together for Wall street purposes, nor can we agree with anyone who would intimate that they are being conducted to-day for the purpose of maintaining Wall street speculations in their own stocks. The great captains of industry do not attempt to be great captains in speculation at the same time, and in one and the same transaction. If an officer of the corporation should have one eye on the business end of the company and the other upon the stock of his company, as a personal speculation, his attention might be diverted from the proper object of the corporation, so that failure in both directions may be the result.

In the ordinary walks of life, such a diversion from the true aim of business enterprises would not be for one moment tolerated. No employer would retain a clerk who divided his time between his business duties and the ticker. The captain of a trans-Atlantic steamship who should be guilty of indulging in private wagers as to the ship's run per day, or as to the length of her voyage, or as to the time when she would pass a certain point, would be instantly dismissed at the end

of his home voyage, because the tendency on his part (if allowed) to indulge in private speculation would endanger the lives of his passengers, the safety of the ship and the regularity of his duties, and all for the purpose of private gain.

If this tendency exists even in a small degree and among the least important corporations, it is a tendency in the wrong direction, and one that should be carefully guarded against. The temptation to indulge in speculation of this sort comes from the assumed possession of so-called inside information, and therefore, where the stockholders, and thus the public, are thoroughly informed as to all of the financial deals of the corporation, such inside information is not as likely to exist and the prime causes of such speculation are thus removed.

CONCLUSION.

In conclusion, permit me to observe that I am no believer in drastic legislation or an attempt to bring about by enactments of statutes that which should be regulated by an intelligent public opinion. Incorporated capital can better be led by an intelligent public opinion than forced by unjust and hysterical legislation. Reasonable publicity and proper restrictions are advisable and necessary. Much publicity and many restrictions will be voluntarily assumed by corporate capital because of a desire to raise their own standing in the public community—to separate themselves from others differently situated.

It has been suggested that there should be a separate corporation act requiring greater publicity and pro-

viding for a full compliance with a proper law in this and other respects. This need not at the outset be made applicable to all corporations, but such a corporation act should provide that corporations complying with it should have a greater degree of freedom from petty annoyances suffered by those under other acts. Let the public exchange for true publicity freedom from state surveillance as to unimportant details. A high moral standard is often better than police supervision, and the proper aim should be to induce incorporated capital to voluntarily take this high moral ground rather than attempt to force capital by strict supervision and petty surveillance.

The national banks, organized under the national act, are compelled by the provisions of that act to comply with strict requirements as to the management of their finances and the publicity of their affairs. In return for this they are granted certain immunities which are not incidental to ordinary corporations; their assets, for example, are free from attachment, no matter where located. Applying this same principle, it has been advocated, and with sound wisdom, that a high-class corporation act be passed embodying all these particulars, so far as the public and publicity are concerned, which are desirable, but in return granting to the corporation immunity from other details of less importance. The result would be the same as in the case of the banks. A national bank is by many deemed to be an institution of a higher standard than a state bank, hence we find more national than state banks. Applying the same principle, create a high-class of cor-

porate law, and those corporations which are able and willing to stand the test would voluntarily come under such a law for the very purpose of showing clearly in the minds of the public the difference between themselves and those corporations which are not thus able to stand before the public. In the matter of transportation, one may go from New York to Chicago for \$10, or may spend \$35. It is a question of choice, but that choice is to a large degree influenced by the company in which one is permitted to go under the \$35 rate and forced to go by the \$10 rate. The man who would go to Chicago for \$10 is deterred from this by the fact that he would be obliged to go in an emigrant train and suffer all the disadvantages of thus being classed by the public, while the man who desired to travel in comfort and to be recognized as a man of means and standing avails himself of the higher-priced, but more luxurious method of travel. Legislation is not needed to compel travelers to go from Chicago to New York by the limited train; the railroads do not seek to compel the use of the high-grade means of travel by law. These matters regulate themselves.

In all these discussions as to rights, remedies and enforcements of certain matters of law, the safest and surest way to bring about the desired result is to educate the public and to enable them to classify the corporations according to the company with which they associate.¹

1. Publications of the American Economic Association, third Series vol. 1, No. 1, February, 1900. Macmillan Company, New York, publisher for the Association.

PUBLICITY, MONOPOLY AND COMPETITION.¹

BY ALLEN RIPLEY FOOTE.

Mr. Allen Ripley Foote closed the debate on the trust question as follows:

It appears to me the consensus of opinion is that public opinion must be relied upon to correct the evils, feared or experienced, from the organization of corporations and trusts. Publicity is demanded as a basis for public opinion. If public opinion is to be correct, the basis on which it rests must be correct. This raises the question at once, how much and what kind of publicity shall we demand? Industrial corporations may be divided into two classes: (a) Natural monopolies; (b) competitive undertakings.

The first class includes all public service corporations. These corporations should be constituted and dealt with as monopolies. In such cases public welfare and private interests should be safeguarded by administrative regulation, based on laws requiring all public services rendered by public service corporations to be sold to users at prices that will represent only their true cost, plus a reasonable profit. Reliance for the complete elimination of all evils, feared or experienced, from this class of corporations, must be upon full and correct publicity.

The second class includes all corporations engaged in industrial, commercial and financial pursuits prop-

1. Extract from papers and proceedings of the twelfth annual meeting of the American Economic Association, Ithaca, N. Y., December 27-29, 1899. Page 210.

erly belonging in the economic group of competitive occupations. When publicity is demanded from this group the demand must be guided by the fact that, to the extent to which publicity is required, competition will be limited. All economists of wide authority, all legislation and judicial opinions agree that, in the domain of competition, the force of free and unrestricted competition must be relied upon as the most efficient means of safeguarding public and private welfare. The essential condition for effective competition is secrecy of accounting. In the sense in which that term is used in discussing corporation and trust questions, publicity and effective competition are incompatible. Full and correct publicity of the private affairs of competing corporations and trusts will unavoidably lead to consolidations and the creation of monopolies. Is this what the people want? For competing corporations and trusts choice must be made between secrecy in accounting with competition, and publicity in accounting without competition. Which shall it be?



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